

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

WILLIAM H. EVANS, JR.,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:06cv746
vs.	:	
	:	District Judge Susan J. Dlott
EDWIN VOORHIES, JR.,	:	
	:	
Respondent(s).	:	

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Timothy S. Hogan. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on September 5, 2007 a Report and Recommendation (Doc. 55). Subsequently, the Petitioner filed objections to such Report and Recommendation (Doc. 57).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendations should be adopted.

Petitioner's requests for voluntary dismissal of this action (Docs. 47, 51), which were filed after Respondent filed the return of writ responding to Petitioner's petition for writ of habeas corpus, is **DENIED**.

Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 2) is **DENIED** with prejudice.

A certificate of appealability will not issue with respect to the claims alleged in Grounds

Three, Five, Eleven and a portion of Ground Eight, which this Court has concluded are waived and thus procedurally barred from review, because “jurists of reason” would not find debatable whether this Court is correct in its procedural rulings. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000).

A certificate of appealability also will not issue with respect to Petitioner’s claims alleged in Grounds One, Two, Four, Six, Eight, Nine and Ten of the petition, which have been addressed on the merits herein, because Petitioner has failed to make a substantial showing of the denial of a constitutional right in any of these grounds for relief. *See* 28 U.S.C. § 2253 (c); Fed. R. App. P. 22(b).

A certificate of appealability will issue only with respect to the claim alleged in Ground Seven of the petition challenging the trial court’s order requiring Petitioner to appear at trial in shackles and handcuffs without sufficient justification specific to Petitioner; Petitioner has made a substantial showing that the claim alleged in Ground Seven of the petition is a “viable claim of the denial of a constitutional right” or is “adequate to deserve encouragement to proceed further.” *See Slack*, 529 U.S. 473, 475 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)); *see also* 28 U.S.C. § 2253 (c); Fed. R. App. P. 22(b).

With respect to any application by Petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting this Report and Recommendation will be taken in “good faith,” and therefore **GRANTS** Petitioner

leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott
United States District Judge